

AMENDMENT NO. 3 TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

This AMENDMENT NO. 3 TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT ("Amendment") is effective April 22, 2014, by and between the CITY OF RIALTO, RIALTO HOUSING AUTHORITY AND RIALTO UTILITY AUTHORITY (collectively, "City"), acting by and through the City Council of the City of Rialto (hereinafter, "City Council"), and MICHAEL E. STORY ("Story").

RECITALS

A. On August 9, 2011, City and Michael E. Story ("Story") entered into an employment agreement that employed Story as City Administrator from August 9, 2011 through December 31, 2012 (hereafter called "Agreement");

B. On August 28, 2012, City Council reviewed Story's employment under the Agreement as City Administrator, expressed its satisfaction with his employment and offered to continue his employment for an additional three year period following the original expiration of the Agreement;

C. On April 9, 2013, Story agreed to make concessions to the Agreement to be effective beginning July 1, 2013 through December 31, 2015.

D. On April 22, 2014, Story and City agreed to revise the Agreement by this Amendment to reinstate Story's right to cash out accrued vacation and sick leave time to be effective beginning July 1, 2014 through the end of the Agreement, in exchange for a reduction in the severance rights due Story from six months to four months pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, City and Story hereby agree as follows:

1. Benefits. Section 3.2 of the Agreement, at Subsections (4) and (5) of the Agreement, as amended, shall be amended in its entirety to remove the cash out prohibitions under those Subsections implemented by prior amendment to the Agreement, with Subsections (1), (2), (5) and (6) remaining unmodified and in full force and effect:

"3.2 Benefits.

....

- (4) Vacation. From July 1, 2014 through the remainder of this Agreement, Story shall receive 4.62 hours of vacation time for each pay period. Any vacation time that is not used in any fiscal year may be carried over to the next fiscal year, at Story's election, provided that Story may not accrue more than 600 hours at any time. In the event that his accrued vacation time reaches 600 hours, Story shall reduce it below 600 hours by using it or exchanging up

to 240 hours through June 30, 2015, which City shall compensate based on the hourly rate derived from his salary at the time of the exchange if a minimum balance of eighty (80) hours of accrued vacation time is maintained after the exchange. Upon termination of his employment as City Administrator, Story shall be entitled to exchange any remaining accrued vacation time based on the hourly rate derived from his salary at the time of such exchange.

- (5) Sick Leave. From July 1, 2014 through the remainder of this Agreement, Story shall receive 4.62 hours of sick time for each pay period. Any sick leave that is not used in any fiscal year may be carried over to the next fiscal year regardless of the number of hours. Story may exchange up to 110 hours of accrued sick leave which City shall compensate based on the hourly rate derived from his salary at the time of the exchange if a minimum balance of eighty (80) hours of accrued vacation time is maintained after the exchange. Upon termination of his employment as City Administrator, Story shall be entitled to exchange any remaining accrued sick leave based on the hourly rate derived from his salary at the time of such exchange.
....”

2. Termination/Severance. Section 5.2 of the Agreement, entitled “Termination by Notice”, is hereby amended in its entirety to reduce the severance to which Story may be entitled under the Agreement from 6 months to 4 months, which amended language shall read as follows:

“5.2 Termination by Notice.

The City Council may terminate this Agreement and the services of Story at any time without cause upon an affirmative vote to terminate made by at least three (3) members of the City Council at a meeting of the City Council, which termination shall become effective ten (10) days from the date of such Council action. Upon the effective date of such termination, Story shall be entitled to a Severance Payment equal to four (4) months of his then salary, excluding benefits, payable to Story under this Agreement on the date of said termination notwithstanding the remaining term on this Agreement as Story’s sole compensation or damages under this Agreement.”

3. AB 1344. Assembly Bill 1344 was recently enacted as a means to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. AB 1344 also requires that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency (California Government Code §§ 53243 - 53243.4). These sections are set forth in full in Exhibit “A” attached hereto and incorporated herein.

Accordingly, the parties agree that it is their mutual intent to fully comply with the Government Code sections that are part of AB 1344 and all other applicable law as it exists as of the date of execution of this Amendment and as such laws may be amended from time to time thereafter. Specifically, AB 1344 includes the following Government Code sections which are hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

§53243.4. Abuse of office or position defined.

Story has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Story, including that Story agrees that any cash settlement or severance related to the termination that Story may receive from the City shall be fully reimbursed to the local agency if Story is convicted of a crime involving an abuse of his or her office or position.

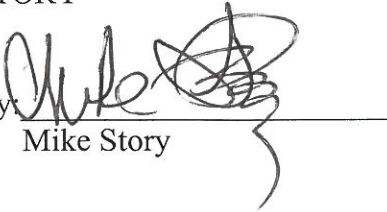
4. Full Force and Effect. Except as specifically provided in this Amendment, the terms of the Agreement, as previously amended in the manner described in the Recitals, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date written in the preamble above. Executed on April 22nd, 2014 at Rialto, California.

CITY

By: 
Deborah Robertson, Mayor

STORY

By: 
Mike Story

Attest:

By: 
Barbara McGee, City Clerk

Approved as to Form

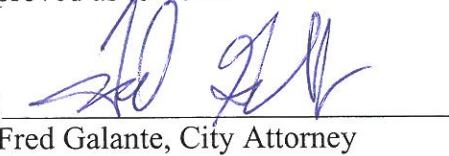
By: 
Fred Galante, City Attorney

Exhibit A

GOVERNMENT CODE SECTION 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

GOVERNMENT CODE SECTION 3511.1-3511.2

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.

(b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:

(1) The person is the chief executive officer of the local agency.

(2) The person is the head of a department of a local agency.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.